



AF/IFW
Attorney Docket No. 82115A
Customer No. 23685

TRANSMITTAL LETTER

Inventor: Eric Friedberg

Serial No: 10/625,293

Filed: July 23, 2003

Confirmation No: 5081

For: FACEPLATE WITH STORAGE DEVICE COUPLED THERETO

Examiner: Dhirubhai R. Patel

Group Art Unit: 2831

Date Due: 01/21/04

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith for the above-identified patent application are the following:

An Amendment

A Request to Withdraw the Finality of an Office Action


A check in the amount of \$60

A return postcard

The item(s) checked below are appropriate:

1. ☒ Applicant(s) hereby petition(s) for a one (1) month extension of time to respond to an Office Action dated 10-21-04
2. ☒ Please charge any fees or costs not accounted for to Deposit Account No. 11-1755.
3. ☒ Applicant is a small entity.

Date: February 7, 2005


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Reg. No. 40,057

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 2-7-05.


Daniel S. Kriegsman



PATENT
Attorney Docket No. 82115A
Customer No. 23685

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
ERIC FRIEDBERG)	
)	
Serial No.: 10/625,293)	Group Art Unit: 2831
)	
Filed: July 23, 2003)	Examiner: Dhirubhai R. Patel
)	
For: FACEPLATE WITH STORAGE)	
DEVICE COUPLED THERETO)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST TO WITHDRAW THE FINALITY OF AN OFFICE ACTION

Applicants respectfully request reconsideration and withdrawal of the finality of the Office Action dated October 21, 2004, in the above-identified patent application.

This request is not to be considered responsive as a reply under either 37 C.F.R. § 1.111 or 37 C.F.R. § 1.116 to the Office Action dated October 21, 2004.

The present Office Action is the second action on the merits in this case. The application was filed on July 23, 2003. An Office Action dated May 18, 2004 was the first action on the merits.

In the first Office Action dated May 18, 2004, the Patent Office indicated that claims 7-8, 10-19 were objected to but would be allowed if rewritten in independent form.

In response to the first Office Action, Applicants filed an Amendment on August 16, 2004,

wherein objected to claims 7-8, 10-19 were rewritten in independent form (claims 7 and 10 having been renumbered as claims 20 and 21, respectively).

In the present Office Action, the Patent Office withdrew the indicated allowability of claims 7-8 and 10-19 in view of newly discovered references (namely, Esteves, Kochanski and Kaloustian).

For at least the following reasons, applicants respectfully traverse the propriety of the finality of the present Office Action. The Manual of Patent Examining Procedure at § 706.07(a) clearly provides as follows:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)....Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

In reference to the above-quoted portion of the M.P.E.P., Applicants note that the present art rejection of claims 8, 11-19 and 20-21 was not necessitated by Applicants' Amendment of August 16, 2004, nor was said rejection based upon art cited in an Information Disclosure Statement during the period set forth in 37 CFR 1.97(c). In fact, Applicants point out that the rejection of claims 8, 11-19 and 20-21 constitutes a new rejection of previously allowed and objected to claims that were amended in the last amendment only by being rewritten in independent form.

In short, the new rejections of claims 8, 11-19 and 20-21 in the Office Action of October 21, 2004, should not have been made final because they were not necessitated by any amendment by Applicants nor were they based on art cited in an Information Disclosure

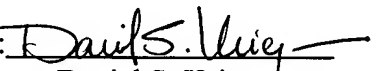
Statement during the period defined by 37 CFR 1.97(c).

Consequently, the present Office Action should not have been made final. Applicants should be given a full and fair opportunity to respond to these new rejections without being restricted to the requirements of 37 C.F.R. § 116. In view of the above, it is respectfully submitted that the finality of the Office Action dated October 21, 2004 is premature and should be withdrawn.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

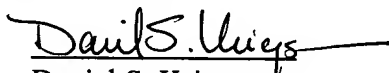
Respectfully submitted,

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Dated: 2-7-05

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